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Avoiding Disputes for Small Business and How to Handle Unavoidable Conflict

Avoiding Disputes for Small Business and How to Handle Unavoidable Conflict **by Elizabeth A. Brown** **Sowerby Law Office, PLLC**

An Ounce of Prevention

Business disputes are one area where an “ounce of prevention is worth a pound of cure.” I have seen many small business disputes escalate into the tens of thousands of dollars because the parties did not have a written agreement, the agreement failed to include important terms, or worse still, contained blanks. Sometimes the parties have attempted to avoid paying the attorney by drafting their own agreement or taking a form off the internet. Unfortunately, the parties don’t anticipate the types of issues that arise or they choose the wrong forms or fail to complete them correctly. A properly drafted agreement would have saved the parties a lot of money in the long run and would have avoided the significant distraction that occurs because of the dispute.

Business Formation

Many times start-ups and entrepreneurs want to move quickly in getting their new business up, running and turning a profit so they don’t want to get bogged down in the details such as: determining the percentage of overall ownership interest between the partners; ownership of intellectual property; putting a value on services versus monetary capitalization. Decisions need to be made at the time of formation about how the business relationship is going to work: how will ownership be determined; what is the time commitment expected from the partners; what are the roles of the partners; who will be in charge of making decisions; how will partners be paid for their efforts on behalf of the company; and how will company profits be divided. Decisions on these issues should be memorialized in the limited liability company operating agreements, guaranteed payment agreements, employment agreements, and services agreements.

Likewise, start-ups need to make sure that they have necessary intellectual property licensing agreements and non-compete agreements to protect the intellectual property that the business depends upon. All of these important documents need to get executed before the business opens its doors. Getting the parties to agree to these issues upfront can be tricky, but getting the parties to agree to these terms after the fact is far more difficult – and sometimes impossible – and results in litigation.

Avoiding Internal Business Disputes

Litigation can be emotionally exhausting for the owners of a small business and may be a distraction to the parties and a drain on the bottom line. In the same way that divorce destroys a family, a partnership dispute can destroy a successful business. The best way to avoid conflict between business partners is to:

- Have a written agreement that thoroughly determines how important issues will be decided
- Have a written agreement that sets forth the role and requirements of each partner

- Regularly communicate and share financial and other business information and data
- Hold regular meetings so that the partners are aware of business operations and the financial status of the business

Alternative Dispute Resolution

Sometimes, despite everyone's best efforts to plan ahead to avoid conflict, disagreements arise. Often when the small business partner meets with their attorney and determines how much that litigation will cost him or her; they decide that there has to be a better way to resolve the dispute.

Alternative dispute resolution (ADR) developed, as a means of avoiding much of the costly and time-consuming litigation procedure. The goal of ADR is to allow the parties to engage a person or persons (a third party neutral) to assist the parties in reaching a settlement without having to go through the complex and expensive pretrial litigation discovery and trial. There is no one ADR process or procedure. Parties can decide what methods to use. For example, if the dispute involves a construction company, the parties might choose to select the owner of another construction company to serve as the third party neutral. Two popular methods of ADR include arbitration or mediation.

Arbitration is an agreement between parties to allow a third party, called an arbitrator, to evaluate each party's case and make a decision regarding the dispute between the parties. Arbitration can take many forms, including that of a mini-trial where each party can call witnesses and bring in a court reporter so that testimony is under oath. The parties can agree for arbitration to be binding or non-binding. If the arbitration is non-binding, the arbitrator's decision is merely a recommendation of how the parties should resolve the conflict.

Mediation, on the other hand, is a negotiation led by a third party who can provide an objective analysis of each party's side of the dispute. Mediation is not binding, so either party can end the negotiation and there is no requirement that the parties settle. The mediator can use any method that the feel will be beneficial to resolving the dispute. The mediator may choose to talk to both sides together or may use shuttle diplomacy to help the parties reach consensus. A successful mediation results in neither side feeling that they have "won" nor "lost."

If you are thinking of starting a new business or are a small business owner and do not have the necessary business agreements in place or if you find yourself with a dispute with your business partners, please contact me to learn about options available for your business.

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